

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UP STATE TOWER CO., LLC, *et al.*,

Plaintiffs,

v.

TOWN OF TONAWANDA, NEW YORK,  
*et al.*,

Defendants.

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18-CV-952-LJV-MJR  
DECISION & ORDER

On August 29, 2018, the plaintiffs, Up State Tower Co., LLC, and Buffalo-Lake Erie Wireless Systems Co., LLC, commenced this action requesting injunctive relief under the Telecommunications Act of 1996, 47 U.S.C. § 332. Docket Item 1.

On October 9, 2018, this Court referred the case to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 8.

On July 8, 2020, the plaintiffs moved for summary judgment, Docket Item 29; on August 10, 2020, the defendants responded, Docket Items 31, 32; and on August 24, 2020, the plaintiffs replied, Docket Item 35. On November 18, 2020, Judge Roemer issued a Report and Recommendation (“R&R”) finding that the plaintiffs' motion should be granted. Docket Item 37. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party

objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Roemer's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Roemer's recommendation to grant the plaintiffs' motion. Judge Roemer found multiple reasons that the plaintiffs are entitled to relief and this Court agrees with each of them. Likewise, this Court agrees that the plaintiffs are entitled to the injunctive relief they request.

For the reasons stated above and in the R&R, the plaintiffs' motion for summary judgment and injunctive relief, Docket Item 29, is GRANTED; the defendants shall grant all permits and site approvals requested in the plaintiffs' 2016<sup>1</sup> and 2017<sup>2</sup> applications; and the Clerk of the Court shall close the file.

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<sup>1</sup> Application for a special use permit to replace an existing tower at 860 Niagara Falls Boulevard, Town of Tonawanda, New York. See Docket Item 29-17 at 2.

<sup>2</sup> Application for a special use permit to replace an existing tower at 203 Kenmore Avenue, Town of Tonawanda, New York. See Docket Item 29-17 at 4.

SO ORDERED.

Dated: January 5, 2021  
Buffalo, New York

/s/ **Lawrence J. Vilaro**  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE